

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRENDA McBRYDE
Claimant

VS.

WILSON CONSTRUCTION CO.
Respondent

AND

**NORTHWESTERN NATIONAL INSURANCE
COMPANY**
Insurance Carrier

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Docket No. 169,227

ORDER

Respondent appeals from an Award entered by Administrative Law Judge John D. Clark on December 4, 1995. The Appeals Board heard oral argument April 4, 1996. Ernest L. Johnson was appointed as Board Member Pro Tem to act in the place of Appeals Board Member Kenton Wirth who recused himself from participating in this case.

APPEARANCES

Claimant appeared by and through her attorney, Mark Schoenhofer of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, James A. Cline of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

ISSUES

Respondent lists several issues in its Application for Review including the nature and extent of claimant's disability and the amount of claimant's average weekly wage. Respondent also argued that it was not given reasonable opportunity to present evidence and urges remand of the case to afford it that opportunity. For the reasons expressed below, the latter issue will be the only one addressed in this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant filed her Application for Hearing in this case on September 2, 1992 alleging an accident on October 8, 1991. The regular hearing was begun July 23, 1993, but the testimony of the claimant was suspended by agreement of the counsel to be concluded at a later time. The terminal dates were then suspended indefinitely because of medical treatment claimant was ongoing. There was then a change of claimant's counsel in the fall of 1993. Claimant's new counsel then took several depositions in the fall of 1994. By letter dated July 18, 1995 claimant submitted the case for decision. Notwithstanding the certificate of mailing, respondent's counsel indicates they did not receive that submittal letter. Terminal dates were never reestablished. The Administrative Law Judge, however, issued an Award on December 4, 1995.

K.S.A. 44-523 outlines procedures for hearings and time limits on introduction of evidence. This statute requires the Administrative Law Judge to set terminal dates and allows the extension of those terminal dates for good cause. In this case, as indicated, terminal dates were suspended and never reset. While it appears respondent would have had more than adequate time to submit its evidence, it had no notice of a time limit for doing so. Under these circumstances, the interests of fundamental fairness require that the case be remanded with directions that the Administrative Law Judge establish a terminal date which affords respondent a reasonable opportunity to present evidence.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated December 4, 1995 should be, and the same is hereby, remanded. A terminal date shall be set and respondent afforded the opportunity to present such additional evidence as may be relevant to its case.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Mark Schoenhofer, Wichita, KS
 James A. Cline, Wichita, KS
 Ernest Johnson, Kansas City, KS
 John D. Clark, Administrative Law Judge
 Philip S. Harness, Director